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IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1977

No. 77-1631

RESTON HOME OWNERS ASSOCIATION,
Plaintiff-Appellee

V.

JAMES L. RIDGILL AND JANIE E. RIDGILL
Defendants-Appellants

MOTION TO DISMISS APPEAL

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ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF VIRGINIA

MOTION TO DISMISS APPEAL

Pursuant to Rule 16 of the Supreme Court of the United States, appellee moves the Court to dismiss the appeal in this cause on the grounds hereinafter set forth.

STATEMENT OF THE CASE

Appellee is a non-stock, non-profit membership corporation which maintains and operates common areas and recreational facilities in Reston, Virginia. By virtue of certain covenants running with the land, all

persons owning residential property in Reston are automatically members of the association and are assessed an annual charge to support its operations. Appellants own such property, and accordingly are members of appellee association.

This case originated in the County Court (Civil Division) of Fairfax County, Virginia, when appellee sued the appellants for $72, representing an unpaid annual membership assessment for the year 1974. The amount sued for was reduced prior to trial, to $60. After two pre-trial hearings and a trial on the merits, the County Court awarded judgment in favor of appellee association.

On appeal to the Circuit Court of Fairfax County, a trial de novo was held and judgment again entered in favor of appellee. Appellants waived trial by jury in the Circuit Court.

Appellants' petition for a writ of appeal to the Virginia Supreme Court was denied, and a petition for rehearing by that Court was similarly denied. See pp. 1 and 2 of appellants' jurisdictional statement.

Appellants contend that various federal questions of a substantial nature are involved in this appeal. As appellee understands them, the questions presented deal with

- whether the consolidation of two predecessor associations into the appellee Reston Home Owners Association was proper;

- whether appellee was and is acting within or without the scope of its corporate powers in making certain capital improvements to some of its properties;
- whether the civil judicial procedures of Virginia violated appellants' constitutional rights.

It is appellee's contention that none of the questions raised by appellants constitutes a substantial federal question and that the judgment appealed from rests on an adequate non-federal basis.

GROUNDS FOR MOTION TO DISMISS

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

The questions presented by appellants, as set out in their jurisdictional statement, do not present any substantial federal question. The first question raised deals with the propriety of the consolidation, under applicable Virginia law, of two predecessor homeowner associations into the present appellee, Reston Home Owners Association. This precise question has previously been raised before this court by one of these appellants, but contrary to the implication on page 12 of appellants' jurisdictional statement, this court refused to hear the appeal. Ridgill v. Gulf Reston, Inc., 406 U.S. 902 (1972).

The second question raised on appeal is whether certain acts of appellee have been ultra vires. The construction of a corporate charter and a deed would seem to be questions uniquely within the province of the state courts, and do not present substantial federal questions.

Finally, appellants raise constitutional challenges to various aspects of Virginia civil judicial procedure. The most fundamental seems to be that the Fairfax County Court, being a court not of record, has no jury trials, and hence appellants contend that their seventh amendment right to trial by jury has been violated. However, appellants were entitled as a matter of right to a non-discretionary appeal to a court of record, the Fairfax Circuit Court, where a jury trial is available and all appeals from County Court are heard in the form of a trial de novo. Curiously, appellants waived jury trial and elected trial by the court. It is submitted that this constitutes a waiver of appellants' complaint about the lack of a jury trial.

The other challenges raised by appellants to Virginia civil procedure in this case do not appear to rise to the level of constitutional issues. They attack matters of proof——for example, authorization by appellee's board of directors to institute this collection suit——and consideration by the court of various equitable defenses raised by appellants. There simply is

no federal question here, much less a constitutional issue.

An appeal will be dismissed by this court when resolution of the issues raised is not appropriate to the circumstances of the case. DeBacker v. Brainard, 369 U.S. 28 (1969). This court has consistently held that the existence of a real, not fictitious or frivolous, Federal question is essential to this court's jurisdiction to review state court judgments. See, e.g., Caldwell v. Texas, 137 U.S. 692 (1891); Equitable Life Assur. Soc. v. Brown, 187 U.S. 308 (1902); Delmar Jockey Club v. Missouri, 210 U.S. 324 (1908).

II. THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS

As noted earlier, this case is one for collection of a $60 membership assessment imposed by the Reston covenants. The trier of fact in this case has determined that appellee proved the elements of its case and awarded judgment thereon. Basically, the elements of proof involved are that a contractual obligation to pay certain monies existed and that appellants had not met this contractual obligation.

Construction of the contract and determination of the facts of the matter are well within the province of the state courts. No federal question had to be addressed in order to pass on the merits of appellee's claim or appellants' defense. The judgment appealed

from clearly rests on an adequate non-federal basis.

III. THE APPEAL DOES NOT DRAW IN QUESTION THE VALIDITY OF A STATE STATUTE AS REPUGNANT TO THE CONSTITUTION.

Under 28 U.S.C. § 1257 (2), a final judgment of the highest court of a state may be reviewed on appeal to the Supreme Court where the validity of a statute of any state is questioned on the grounds of its being repugnant to the Constitution. But the challenge to such a statute must have been distinct and substantial, House v. Road Improvement Dist., 266 U.S. 175 (1924), and actually decided, Ireland v. Woods, 246 U.S. 323 (1918).

In this case, appellants raise on appeal the same unelaborated challenge raised below to the "jurisdictional, removal and appeal" statutes dealing with the Virginia County Court system. Appellants have never explained why they object to these statutes other than the bald assertion that they violate the Seventh Amendment. However, it appears that every objection they could conceivably have is overcome by their guaranteed appeal to a court of record, with trial de novo. On that appeal, appelants waived jury trial.

Nevertheless, appellants continue to claim some sort of abridgement of their rights by reason of these procedural statutes which bear absolutely no relation to the merits of this case. Such unsubstantiated claims

should not serve as a basis for asserting federal jurisdiction under Section 1257 (2).

For all of the foregoing reasons, the appeal herein should be dismissed.

Respectfully submitted,

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